

MEETING MINUTES – Meeting # 2
Biosolids Rule Revision Advisory Group (BRRAG)
August 11, 2006

WELCOMING REMARKS

- Daniel K. Thompson (Daniel K.) identified that BRRAG members David Bosh, Mike Chapman and Shelly Eisenbarth are absent for today's meeting. (All other members of the BRRAG were present.)
- Daniel K. introduced Kyle Dorsey (Kyle) who was not present at the last BRRAG meeting. Kyle said that he worked for Tenelco and provided background on his company. He explained that his previous role at Ecology was as the Statewide Biosolids Coordinator.
- Marietta Sharp (Marietta) from Ecology's Northwest Regional Office was identified as an observer. Later in the meeting, because of the absence of Shelly Eisenbarth, the BRRAG agreed that Marietta should be the Ecology regional representative for this meeting and comment as such.

FOLLOW-UP INFORMATION FROM MEETING # 1 (7/7/2006)

- Daniel K. said that Ecology staff posted 20 pages of notes from BRRAG Meeting #1 (07/07/2006) and additional comments received after the meeting on the Ecology-Biosolids website. Ecology also sent an email message on the Biosolids ListServ that the meeting minutes and agenda were available for review. Daniel noted that the meeting minutes were revised last week (8/2/2006) and reposted on the web due to late comments submitted by one BRRAG member.
- Daniel K. said that he is reviewing Meeting # 1 notes, including comments and suggestions received during and after the meeting, and is considering them in the rule revision process.
- Dick Hetherington (Dick) said that he would like to discuss the issues he sent via email to the BRRAG. Dick said he would go over the attachments sent in the email.
- Daniel K. said he interpreted Dick's issues/concerns as being primarily focused on public notice and the state's approach to using a general permit.
- Dick said he is hoping to see major changes in the way the state uses the general permit structure for biosolids. Dick said he will raise these issues later in the meeting.
- Tony Barrett (Tony) wanted clarification on Dick's concerns. Tony wanted to know if there is an EPA objection of the state having a general permit. Dick clarified that EPA has objections/issues within the manner in which the state is using the general permit for biosolids, but that EPA has no objection to the use of a general permit.
- Daniel K. reviewed PERMITTING PROCESS (Issues 1 - 9) and provided background on why these were issues. He relayed that Issues 1-9 have been identified by internal Ecology staff and outside stakeholders, including other state/local government representatives.

PERMITTING PROCESS (Issues 1 - 9)

- 1. Impose a 180-day (alternatively, a 90-day) requirement for applying for coverage under a new permit for all applicable facilities unless a later date is approved by the regional biosolids coordinator.**
- Daniel K. stated that such an approach would provide clarity and simplicity regarding when a permit application is due. In addition, the allowance for the regional biosolids coordinator to approve submittal at a later date would provide for flexibility based on facility-specific criteria. The current variable timeline approach is confusing to some. The date depends on the facility size, the facility type, and whether or not the facility is in compliance with the expiring GP. An alternative approach for consideration is to directly connect the application date to a facility's NPDES permit or State Waste Discharge permit (SWD) renewal date. However, not all applicable facilities have an NPDES or SWD permit. Regardless of what approach is taken, the goal is to have a simple and clear requirement.
- Doug Miller (Doug) asked where would we start our timeline? Daniel K. said that the timeline starts when Ecology issues a new permit.
- Tony clarified that the timeline Doug is referencing is related to the NPDES permit. He commented there isn't that much difference—if we want it to be 180-days it could be clarified in a couple of paragraphs.
- Tony asked where in the regulations does it say this (the timeline)? Daniel K. said that it's in Section 310 of the rule but that it's a bit clearer in Table 5.1 of the general permit.
- Kyle said that he would agree that a clearer, simpler approach would be useful; he has no strong feeling one way or another. Historically, with federal regulations, 90-days was not workable. For example, if you have a state waste discharge (SWD) permit, etc., you can't anticipate each scenario. We should keep in mind that doing all work upfront and doing it later in the timeline doesn't make much difference in some cases.
- Daniel K. said if there is a minor facility in compliance, their timeline is tied to the NPDES or SWD permit which can mean that submittal of their biosolids permit application can be up to 4 ½ years after the issuance of a new general permit—depending on renewal date. Ecology can ask for it earlier, however. Daniel K. noted also that the existing timeline for minor facilities has been confusing to some.
- Jim Leier (Jim) said the water quality regulations require submittal of an application a minimum of 180 days prior to the expiration date. Daniel K. noted that this is precisely how the current system works for minor facilities that are in compliance. In other words, the submittal date for the biosolids permit is the same as the submittal date for renewal of an existing NPDES or SWD permit for such facilities. Jim noted, however, that in the Central Region, the Water Quality Program has been requiring submittal 365 days prior to the expiration date of existing NPDES or SWD permits.
- Daniel K. asked Doug to explain how difficult the general permit application was since he'd recently been involved in completing applications for 5 separate small WWTPs?

- Doug said overall it (the permit) wasn't that difficult, but some pieces were confusing (it was clear as mud). Doug commented 90 days is difficult to meet. He said we did 5 treatment plants. I don't see anything wrong with requiring submittal in 90 days because it forces facilities to move quickly. If a 180-day period is the starting point, many will simply put it off until 90 days or less before the end of that period anyway. However, there needs to be flexibility on the regulator side. We had to borrow internal funds in order to pay for hiring a consultant to complete most of the application package. If we had to borrow funds from outside to do this it would have pushed it back another 30-days.
- Kyle suggested that Ecology could have the applicants submit essential information due in 90 days and leave flexibility for completion of the remainder of the requirements.
- Roberta said that she was able to do it 90 days because there was a lot of lead time and there were no significant changes. She noted that NPDES permits are on a different schedule and recommended that Ecology not tie the biosolids permit applications to the NPDES schedule.
- Doug said he agreed with Roberta: We wouldn't be able to tie it to the NPDES permit (there's no end date to one of ours).
- Daniel K. said having a set timeline would be his preference, but there is some value in tying the timeline to the NPDES or SWD permit timeline.
- Marietta agreed that a set timeline approach was preferable because of the certainty and clarity. She pointed out that the existing permit's requirement for a 90-day timeline for large and out-of-compliance small facilities resulted in a significant improvement in compliance from facilities in the Northwest Region.
- Dick asked if a facility applies for coverage under the state's general permit, but their application is not acted upon for, say, 2 or 3 years (provisional coverage), what are their obligations? What are they subject to? Under the federal rules they are subject to the requirements of the old permit until they are given coverage under the new permit. Daniel K. replied that in WA, they would be subject to the conditions in the new permit, the existing biosolids regulation, and any plans they submitted as part of applying for coverage.
- Dick said that the use of a general permit in the federal program allows for a simple application process and permit (one page) for similar facility-types (no individuality). Essentially, the approval would say something such as, "...you are covered to operate under appendix L or C...", and the facility is then only covered under this.
- Kyle said under the general permit you can eliminate the application/plan process. The more that you focus a general permit the less churning you have to do during the application. To have a defined timeframe, that's another thing you can do. We created a lot of built-in flexibility with this rule.
- Jim asked if general permits are issued for 5 years? Daniel K. said yes, they are issued for 5 years, but they remain in effect even after 5 years until a new one is issued or an individual permit is issued.
- Dick added that you can't do anything new under the old permit, and you must apply for a new permit to do new things.
- Daniel K. asked if anyone was opposed to having a set timeline? No opposition was voiced from the BRRAG members. Daniel K. said I like the idea of having 90 days

with the allowance for a greater time permit upon approval from the regional biosolids coordinator.

- Kyle indicated that the individual permit option was in there because of federal requirements.
- Kyle asked for clarification on whether or not approval for a timeline of greater than 90 days would be by the statewide biosolids coordinator or by the regional coordinator on a case-by-case basis. Kyle said be clear if it's on a case-by-case basis, otherwise Ecology could have some problems, especially if there is differences between the way each region handles requests. Daniel K. replied that the current plan would be to have any approvals for a timeline of greater than 90 days made by each regional coordinator on a case-by-case basis.

2. Continue to allow for a “checklist” approach to applying for coverage under a new general permit.

- Daniel K. relayed that Ecology would like to continue its approach to reduce document duplication and to simplify the process. This approach requires a new *Application for Coverage* and written documentation that any SEPA requirements have been met but allows for the use of a checklist to defer to previously submitted documents for the remainder of the required documents. The checklist could be incorporated into a revised *Application for Coverage*.
- Daniel K. notes that SEPA will continue to be required in some form. The only way SEPA is going to change is if SEPA rules change or Ecology completes an EIS for the biosolids permit, and neither is going to happen anytime soon.
- Kyle said not every SEPA process requires the checklist. There is a “note to the file” option where you may not need the checklist if nothing has changed and everything is the same.
- Daniel K. said that you do have to have a SEPA official (at the least) look at it.
- Tony said he had concerns about bad operators; those need to be reigned-in—I want to be sure to that the authority isn't given away. Daniel K. said the authority is always there to have “the person” require another SEPA document, just because they submitted something in the past doesn't mean we have to accept it now.
- Kyle relayed that the second time around that you are not obligated to have public notice or a checklist every time and that it does depend on the SEPA official and their view of what is required.
- Daniel K. said it also depends on how much work you did the first time around, the SEPA official, and whether or not there were any changes.
- Kyle said SEPA is generally done at the local level—some are city officials, some are county.
- Daniel K. said that in most cases Ecology is the SEPA lead agency for privately-owned facilities but rarely for publicly-owned facilities.
- Michael Coster asked what constitutes a significant vs. a minor change? Are there guidelines? Tony responded that if they think someone is going to challenge it that's usually what constitutes SEPA significant vs. minor. Daniel K. replied that the biosolids rule has a definition of “significant” to provide some objectivity.

- Dick said that SEPA doesn't seem to cover endangered species much. Dick asked Daniel: Do you have anything about endangered species in your permit that's not just in SEPA? Dick said he has concern that the state is just relying on SEPA for endangered species. Daniel K. replied that the permit and rule address endangered (and threatened) species by disallowing biosolids applications that are likely to adversely impact threatened or endangered species or their critical habitat.
- Kyle said SEPA and the permit will address the endangered species issues. In reality, though, no one is going to check for new ones within the 5 year-permit cycle unless there is a big public uproar. It's not a continuous model to check for endangered species.
- Marietta said if someone complained that a permittee was adversely affecting endangered species Ecology would go and inspect; Ecology has enforcement authority.
- Kathleen Deason (Kathleen) said that biosolids applications are usually applied to disturbed soil/wheat farms. There is a loophole with NEPA and state-listed species. Daniel K. said in any case they have to do SEPA and meet the biosolids rule/permit requirements, and all of these include state-listed species.
- Tony indicated things wouldn't be added to the list without fanfare/publicity and it doesn't seem like the SEPA official wouldn't be aware of this. Daniel K. commented that Dick's point is that it (the permit/SEPA) is only reviewed only every 5 years.
- Marietta said that this time around there were many facilities that hadn't submitted anything to Ecology. The next cycle we won't gather all the documents because we'll have them.
- Dick asked if the checklist included state approval documents?
- Daniel K. said the checklist that we used didn't include documents that were issued after the permit, save SEPA, which we did ask for. We don't have a checkbox for final approval letters, but that might be a good idea.
- Daniel K. noted that there seemed to be agreement from the BRRAG with the continued use of a "checklist" approach to applying for coverage under a new permit.

3. After the issuance of a new general permit, have Ecology conduct SEPA review and perform public notice for facilities not actively managing biosolids (e.g. lagoon systems) and those who merely transfer (or plan to transfer) their solids elsewhere for further treatment.

- Daniel K. said the benefit would be to expedite, simplify, and reduce the costs of the permitting process for such facilities. The suggested approach would basically have Ecology to do a lot of upfront work (SEPA, etc.) for very similar facilities. There are ~150 facilities that fall into one of these categories. Under this approach Ecology would prepare any SEPA checklist and act as the SEPA lead agency. Facilities would still need to submit an *Application for Coverage* and any required plans prior to Ecology conducting SEPA and public notice. If during the permit cycle the facility changed its approach they would be responsible for any SEPA and public notice requirements. This approach would be incompatible with a variable application timeline.

- Kyle asked Daniel how would Ecology coordinate with many SEPA officials? Daniel K. responded that he guessed that the majority officials would like to see Ecology take the SEPA lead.
- Tony said that they would have to sign a document ceding SEPA lead authority.
- Kyle said since a lot of them are small they would likely be willing to cede SEPA lead authority.
- Daniel C. said I don't know, some may not cede their authority.
- Daniel K. said that if some local jurisdictions didn't want to have Ecology conduct SEPA for them, then they would simply have to take the responsibility for ensuring adherence to any SEPA requirements.
- Jim has a question about lagoons and how they are managed. Our hydro-geologist said that all lagoons leak. If we conducted a SEPA review do we have standards with liners/non-permeable membranes? Daniel K. said the biosolids rule has such standards for storage lagoons at WWTPs. Treatment lagoons at WWTPs fall under the WQP's permits. For other facilities that are permitted by the Solid Waste Program (SWP), there are standards (we talked about these in-depth at the last meeting and Ecology's desire to enhance the requirements). The facilities we had in mind under this approach were WWTPs, not septage facilities separately permitted by the Solid Waste Program.
- Daniel K. indicated that he needed to think more about the potential for this broad approach to impact the ability for others to review proposals. He noted that in no way do we (Ecology's SWP) want to circumvent the ability of the WQP or any other interested party to comment on a facility's proposal.
- Kathleen asked if a SEPA checklist and EIS are required? Daniel K. responded that he sees it as a SEPA checklist and a probable DNS rather than an EIS. Ecology would complete a checklist, issue a DNS, then send it out to all agencies of jurisdiction across the state and run newspaper notice. The agencies of jurisdiction would include the WQP, so that should ensure that the WQP has an opportunity to comment on any issues of concern.
- Arlie asked how this approach might affect the overall "manpower" shortage at Ecology. Daniel K. said that the workload would primarily affect only me, the statewide biosolids coordinator.
- Tony said the absence of a SEPA review doesn't preclude the locals from taking a closer look at a particular site. Even if SEPA review concluded properly sited lagoons with proper integrity, it doesn't prevent locals from enforcing or looking at the site more closely.
- Kathleen recommended that if you/Ecology do most of the review, Ecology could provide a programmatic SEPA, so that part of the checklist could be provided for the locals but still have locals be the lead. Daniel K. said that on an individual basis we have done just that.
- Larry Short (Larry) asked if most of these facilities are small towns? Daniel K. said yes, and most are lagoons.
- Roger Hickey (Roger) asked if they want to change managers every year would that be provided for? Daniel K. said that in public notice it would be provided for, and there's a box on the application form that provides the option to use other contractors also. Facilities are not limited to just one manager.

- Dick commented this is for an ideal general permit facility. All the work is done by the state and the facility just signs up for it; basically it's for a whole bunch of small facilities with identical requirements.
- Daniel K. asked if EPA does the public notice?
- Dick said yes, the permitting agency does this to notify the public about the general permit process. The permit is attached and goes out in a newspaper notice to the community.
- Tony said that it sounds like people are in support of Ecology doing upfront SEPA work or programmatic SEPA review. Let's streamline our time on the easy ones and spend time on the ones that are problematic.

4. Exempt from the permitting requirement facilities that do not plan to actively manage solids during the permit cycle (e.g. many lagoon systems). If circumstances change, the facility would have to submit a permit application at least 180 days prior to solids management.

- Daniel K. said this would primarily affect lagoon systems. The proposal would be to strike the permitting requirement unless they manage solids. Ecology's records show there were approximately 118 TWTDS in 2005 that did not handle any solids. A problem with this approach is how to handle "emergency" removals when removal must occur over a very short period of time. Another problem is that without any submitted information, Ecology would be unable to determine if the facility has stored solids subject to the 2-year storage limitation. Yet another potential problem with such an approach would be that it may violate federal program requirements that every TWTDS apply for a permit, and even if the state didn't require a permit application, EPA still would. On the plus side the approach would eliminate the need to address many (probably most) of the facilities considered in the approach suggested in Issue #3.
- Doug would say no. Facilities need to fill out some paperwork.
- Marietta said she would agree with Doug. If you have a permit there wouldn't be an issue with emergency situations.
- Kyle said letting them out of the permit requirements would be a problem—not requiring permits for NPDES facilities—that one would be a show stopper.
- Doug said you could make it a one-pager if they had an emergency removal and stated what their plan is. For a small facility the operator needs to know what to do; there needs to be a plan in place as a temporary basis. It's not a good idea for a blanket exemption.
- Tony agrees with Doug that this should not be allowed. There should be some simple checks.
- Dick agrees that there should be options for emergency disposal approval and that they should be required to submit some plans.
- Doug said that an "emergency out" option may lead to increased landfill disposal. You need to be aware of continuous "emergencies".
- Kyle indicated that you should craft the rule carefully enough so that you can avoid the continuous emergencies.

- Daniel K. said that as part of the annual report we/Ecology are now asking facilities to measure how much solids they have accumulated. As a side note: there's a lot of solids that have accumulated in storage and treatment lagoons.
- Tony asked how often emergencies happen? Daniel K. said it happens occasionally.
- Jim said that he knows of one case of an emergency resulting from one lagoon: a WQ permitted facility. Jim asked how many are not permitted under WQ in the Central Region? If there's a number I'd be curious to know. Daniel K. said that he could provide Jim with this information.
- Dick suggested that Ecology could prioritize permits, placing those who do not handle solids near the bottom of the priority list.
- Tony asked for clarification on what Jim asked. Are we assuming that private operations have their own septage facilities? Daniel K. noted that to his knowledge there is only 1 septage lagoon in the Central Region that does not have some sort of WQP permit in addition to a SWP permit; this is a privately-owned lagoon. He thinks there are 2 publicly-owned lagoons that have both a SWP and a WQP permit. However, Jim should contact the regional coordinator.
- Kyle said that his experience was lagoon facilities do have emergencies. Facilities need to look at costs for cleanout when the time comes up and the ability to muster the necessary finances. Generally, most lagoon systems are not prepared to pay for a clean-out because they have not considered just how costly a clean-out will be. The permit process should address capacity level, funds and alternatives to cleanup in a reasonable fashion.
- Jim said WQ permits have provisions to require plans to maintain adequate capacity; it could be handled in the general permit as well.
- Dick added that the agency as a whole should address it (cost estimate of addressing solids).
- Daniel C. said that the problem is determining adequate estimation of capacity; meaning, solid amount and how fast you are generating the solids.
- Daniel K. stated that the BRRAG appears to be strongly opposed to exempting certain facility-types from the permitting requirements. However, all seem supportive of any efforts to find some simplified approach to permitting—especially for those facilities that are not handling solids.

5. Provide an exemption from the permitting process requirements for research projects that do not exceed 5 acres if a research plan has been submitted and approved by the regional biosolids coordinator and any public notification deemed necessary by the regional biosolids coordinator has been conducted.

- Daniel K. noted that currently the land application of Class B biosolids is supposed to be done only at a permitted site that has gone through the full process. This can discourage research in some circumstances. Even if this proposal were to be written into a revised biosolids rule, SEPA requirements may still have to be met. However, there are categorical exemptions from SEPA for certain types of data collection and research.
- Tony asked what would be different for a facility if a research exemption were allowed?

- Daniel K. talked a bit about some proposed small-scale research in Eastern Washington on wheat protein content. The proposal would have used biosolids on a few very remote sites covering a total of less than 1/5 of an acre. Among the things, a research exemption would probably eliminate any public notice and any *Site Specific Land Application Plan* requirements.
- Roberta said the current requirements do discourage research because you have to do everything; permitting for a (big) 500 acre site has the same requirements as that for a (small) 5 acre site, including public notice. She provided an example of research that King County conducted on poplar plantations near Prosser during which full permitting was required, and the requirements included groundwater sampling, etc.
- Tony asked would you have done the monitoring anyway as part of the research plan? Roberta said maybe/maybe not because of groundwater concerns.
- Kyle suggested that Ecology could write a research general permit; certain research institutions could apply for coverage under it. Kyle said federal regulations would not likely allow for a complete exemption.
- Dick relayed that the problem is saying “exempt” from permitting vs. saying “less rigorous” requirements under the permit. He suggested Ecology have less restrictive requirements (for size of site).
- Roberta asked if a research plan would substitute for a site specific requirement? Daniel K. responded, yes, however, this would require changing the current rule language.
- Tony asked if a permittee can be “exempt” from public notice in the federal program? Daniel K. said he doesn’t know, and then he asked Dick if it’s allowable to exempt certain research from public notice?
- Dick said the federal government won’t issue a permit to anything but a facility; he said the state can do it for individuals and perhaps the state could have an appendix for research in its general permit.
- Kyle commented that you could follow Dick’s recommendation for less stringent process requirements; for example, not having each individual site listed if less than 2 acres, for example, without doing the whole permit process.
- Daniel C. said there is no way my facility would allow its biosolids to be part of a research project under some other biosolids producer’s permit. The question is who would be the permit-holder?
- Jim asked if the permit rule has any exemption from agronomic rates for research activities. Daniel K. said yes, there is a possible exemption from the agronomic rate requirement for research if part of an approved *Site Specific Land Application Plan*; there is also a possible exemption from the agronomic rate requirement for certain land reclamation activities.
- Daniel K. said that what I’m hearing is an exemption isn’t going to cut it (from federal delegation standpoint), but a simplified permit process for research may work.

6. Impose a requirement for public notice when applying for coverage under a new permit if a facility is actively managing solids.

- Daniel K. noted that this is needed in-part to be more consistent with the federal program expectations that notice be conducted for each land application site each

- permit cycle. It also is needed in order to guarantee an open and public state biosolids program. The recommendation includes elimination of the need to conduct notice at land application sites if the applicant can show that they've conducted regular notice at the site (e.g. a facility that regularly notifies adjacent landowners about their operation) or if the material goes to a permitted biosolids beneficial use facility that has conducted the necessary site notice.
- Tony wanted clarification on public notice: I thought public notice was required? Is the distinction now that if there is an insignificant change you need public notice?
 - Daniel K. responded that yes, under the current proposal being discussed, now even with insignificant changes you will need to do public notice when applying for coverage under a new general permit if you are actively handling solids.
 - Roberta asked what does the current rule say?
 - Daniel K. said it's not clear. My interpretation was that if there are no significant changes since public notice was last conducted, then public notice is not required when applying for coverage under a new general permit. However, EPA has clearly objected to this approach.
 - Michael said the City of Spokane would find it an onerous process to do public notice at every site every time they apply for coverage under a new general permit.
 - Roberta asked if you could adjust what you could do in terms of public notice (newspaper, etc.)
 - Dick said the site notice was brought in so that people (neighbors) would have the opportunity to comment but generally there is not a preference as to how or where to conduct notice.
 - Daniel K. read a portion from the preamble to the federal biosolids regulation out-loud which stated that site notice and other notice is required and that, "*...in all cases [notice], must require at least notice to adjacent or abutting land owners and occupants.*"
 - Dick said he stands corrected.
 - Marietta asked about a mailing to neighbors?
 - Tony asked Roger: How do you do public notice? Roger responded: by using newspapers.
 - Michael Coster said with 30-40 sites it could be an extreme task.
 - Tony relayed the point is that affected parties are notified—we should have some flexibility to contact affected parties.
 - Daniel K. said the rule currently says that facilities should use some method that is reasonably designed to reach potentially interested parties. At any sites where non-EQ biosolids are proposed to be applied, there is a minimal requirement to post sites for at least 30 days prior to the first application. This is a one-time requirement under the current rule.
 - Kyle said that public notice is a pain (one of the most burdensome part of the program). It seems to me the federal program really wanted a public opportunity to comment. Ecology appears to have taken a step back from this.
 - Tony said I don't think in our county we could get away with not doing public comment; if they didn't do it, we would end up doing it.
 - Daniel K. clarified that his interpretation was that the rule does not currently require additional public notice if notice was previously conducted and no significant

- changes have occurred since the last notice. In addition, he thinks Ecology covered notice quite well when it issued the new general permit last year by posting 2 notices in newspapers across the state and in the state register and doing 1 notice in the SEPA register. The newspaper and state register notices cited how to access the list of facilities that had submitted a *Notice of Intent* to apply for coverage under any new general permit. The notices didn't list any particular sites, but Ecology does have information on all sites where non-EQ biosolids is being applied, so interested parties could have asked for this information.
- Arlie Huffman asked where do we stop? Right now we are publishing in the papers, putting signs up, and sending letters to all the neighbors for ongoing operations; we also hold an annual public meeting in one of the counties in which we operate. This is required year after year. Every 5 years seems like it would give people a chance to comment. We need some definition of what is public notice; we need to specify what needs to be done.
 - Doug said there is a "good neighbor policy": you let neighbors know what you're doing or what you want to do; rather than placing notices in the newspaper legal ads, you make individual contact. I think that's part of what we are as a public entity; the public should have the opportunity to comment. We should make an outright effort to meet with neighbors.
 - Roberta commented on how it is important to define neighbors if we require public notice to neighbors.
 - Dick said federal intent is to implement public notice for renewal (hearings, newspapers, etc.). EPA handles public notice for existing sites through the newspaper. The big thing we struggled with was the new sites that came in after that 5 year period – we didn't want to issue a new permit for every new site. Dick said the plan should be focused on new sites: where are they going to be and how are they going to be handled? Public notice for new sites should get back to the permitting agency; there should be a marketing plan. (An example is the franchise-type model.) Emphasis should be on new sites and how they are handled.
 - Tony said that with the current rule language, if there is a significant change (which is defined) then notice is required; it seems to me that there is no requirement for public notice for no change. If the state had a program similar to the federal program then it would be ok; maybe there could be a simplified public notice for no changes (for the 5 yr. permit).
 - Daniel K. responded and said that might mean a newspaper notice that Ecology conducts.
 - Dick said EPA does public notice for the 5 yr. permit for facilities.
 - Daniel K. said that every 5 years Ecology will be doing fairly extensive public notice across the state for the general permit that includes a list of facilities that will apply for coverage under that permit and asked Dick if that would be sufficient? Dick said no because there was no list of land application sites.
 - Kyle responded to the list of land application site by suggesting listing some of this stuff up on the internet.
 - Daniel K. the plan is to eventually have information on all land application sites up on the internet, but the process to get there has just begun, so it won't be available for a long time.

- Roberta added there needs to be some flexibility. In Arlie's case it seems overboard (not needed). Going back to our forestry site, we need to put up a sign to every little 40 acres. Case-by-case there is going to be something needed.
- Doug said we try to contact everyone: public meetings, letters.
- Arlie said that it takes a lot of time and effort. Everyone knows us; it's not the people who are interested who is going to comment, it's the person who has an axe to grind.
- Daniel C. commented that it's important to have flexibility. I'd rather not have a prescriptive public notice requirement.
- Tony wanted clarification between Issues 6 and 7.
- Daniel K. said that Issue 7 is different in that under the current program—after you've got that final coverage—if you make any changes significant or not, technically you are going to have to go back through the process for public notice. For example, if your application documents you state that you use a belt press for dewatering to 18% solids but you then decide to use a centrifuge and dewater to 30% solids, technically you are supposed to go back through public notice. However, Ecology has not necessarily been enforcing this.
- Tony wanted clarification on Issue 6: If facilities make a significant change to the permit, then they have to do public notice? (It is found under Section 310-11(a).) Daniel K. responded yes, that is the correct interpretation of Issue 6.
- Kyle said the state doesn't have a "minor" permit modification provision.
- Daniel K. said that regarding the need to conduct notice, we have to clarify whether or not notice is required each permit cycle, and, if so, how that notice should be conducted and who should conduct it. After reading the federal rule preamble, my interpretation of federal expectations was that there is a need for some sort of direct contact with application site neighbors, but Dick has said that is not the case. We need to require some notice, but we don't need to necessarily have to require direct notice to neighbors, and we don't necessarily have to have the facility conduct the notice; Ecology could potentially do it.
- Roberta asked if you can clarify that in the rule or in the general permit. Daniel K. responded yes. Roberta then suggested, you could let the rule say that public notice is required and let the general permit outline what the public notice should be.
- Kyle suggested Daniel K. get together with EPA to outline what is required at a minimum in terms of public notice. Kyle also agrees with Roberta's suggestion to keep the rule general and get specifics in the general permit
- Tony said he agrees with Kyle; the state should meet with EPA.
- Daniel K. agreed that he would draft some new language on public notice requirements and discuss it with EPA.
- Dick said that Ecology is not notifying the public enough—Ecology is not providing public notice on existing sites when the permit is issued. EPA is not interested in how it is done but that it is done.
- Daniel K. said the option is there for facilities to do the public notice or for Ecology to do it or for both the facility and Ecology to do some pieces of public notice.
- Arlie asked every time we add a city is that a significant change? Daniel K. responded, "Not in my mind," (meaning, not significant) because your operation has conducted ample notice previously that overtly states that you will be seeking to

manage biosolids from facilities that are not currently identified in your permit application package.

- Arlie said there needs to be clarification on what is a significant change. For example, expansion of XXX acres is it or it is not significant, etc.? Do we have to republish? Daniel K. responded that it depends. In the new language we/Ecology will try to clarify.

7. Implement a “non-significant change” provision which would explicitly eliminate the need for public notice for “non-significant” changes either during a general permit or when applying for coverage under a new general permit.

- Tony asked where in the current regulation is it required for non-significant changes now?
- Daniel K. said he would look into this; there is language in the rule that suggest this even if it’s not entirely spelled-out.
- Kyle asked Tony if you give someone a permit to do something, then they want to do things differently, would you allow them to do this without public notice? Kyle suggested: Maybe Ecology could revisit minor modifications in the federal regulations 501(15) (e) (iii), which cross-references 122.63 and adapt to the state regulations.
- Dick said that the state can choose to have this in their regulations. Dick said minor modifications are prescriptive in the federal program; in other words, the federal program specifically lists what is “minor”, and the list is fairly small.
- Daniel K. said that we’ll work on the definition of minor modifications, but we’ll try to keep it open so that we’re not as prescriptive as the federal program because there are a lot of “minor” changes that would not be considered “minor” under the federal program.
- Kyle said a lot of the issues are related to SEPA. There was a lot of reluctance to changing anything in the permit; that was the kind of input he received during the rule development. He thinks that’s why there is no minor changes provision in the state rule despite there being one in the federal program.
- Dick suggested, for example, if an agronomic rate changes, then build this into the permit.
- Daniel K. said that’s a good suggestion. For example, under the current program if a facility was approved for their operation that strictly stated that they were using biosolids for alfalfa production, then they wanted to switch to a grain crop, they shouldn’t have to do public notice just because it’s a different crop with a different nitrogen requirement.
- Daniel K. said he’d work on this and that he’d get back to Tony on the part of the rule that has led Ecology to believe that technically no minor changes are allowed without new public notice after final coverage has been issued.

8. Eliminate the requirement for 2 separate published public notices. Instead require just 1 notice and begin the 30-day comment period and any required site posting when that notice is posted.

- Daniel noted that this approach would result in a 30-day public notice process instead of the current minimum 37-day process. It also would be more consistent with the typical SEPA notice process. And it would somewhat reduce the costs associated with public notice.
- Kyle said that the two separate public notices came from ECY-WQP's approach during the period of 1993 to 1998. The reason why the public comment period started after the 2nd notice was a mistake.
- Jim stated that he didn't think that was the requirement now; now it's just 1 notice with a 30-day comment period for WQP permits.
- Tony said that you should follow the same process as in 226 (the general permit rule).
- Daniel K. said that he is nearly certain that the 1 notice and the 30-day comment period is what is required by 226, but he will review to be certain.
- Tony said that we/Ecology need to make sure this will hold up.
- Daniel stated that he'll look closer at 226, and if a single notice is in fact all that is required, that's the way the revised 308 will be written; if 2 notices are required, then minimally we/Ecology will change the language to start the public comment period after the 1st notice instead of the 2nd so that that the process is 30 days instead of 37.

9. Deny the issuance of final coverage or expansion of existing operations unless all outstanding enforcement issues have been resolved or are being resolved or are being resolved and any penalties have been paid or are being paid.

- Daniel K. said this came up when a facility that had not paid penalties wanted to expand operations and obtain coverage. Ecology did an extensive review of its options and found that there was no existing allowance for outright denial of the proposals.
- Dick thought that Ecology had a termination clause, including denial of permits, and asked: isn't there a denial of permits?
- Daniel K. responded that you can deny a permit application for certain reasons, but failure to pay penalties or respond to other enforcement actions is not one of the reasons.
- Tony said that we've run into this: We refuse to issue permits where the owner is not in compliance. The court said that you can deny permits for expansion, but there needs to be a connection to the current proposal. For example, you can't deny a permit for an outbuilding at a home just because the home wasn't permitted, but you could deny a permit for an expansion of the home.
- Daniel C. said you need to check in with the AAG on this one.
- Kyle commented that you can't get a drivers license with outstanding fines.
- Dick said it seems as if they are doing something wrong then you should be able to deny the permit.
- Daniel K. said this is about orders, not just penalties. This would allow us to say "no" to proposals simply for failure to be in compliance with the conditions of an order or for failure to pay a penalty. This assumes that there are no outstanding appeals of the order or penalty. In other words, the enforcement action would have had to have gone through all of the proper channels so that they are considered to be "final".
- Dick asked what can you do if they don't pay penalties.

- Daniel K. responded right now we keep reissuing penalties.
- Tony suggested that Ecology could perhaps seek an injunction.
- Marietta said there needs to be something in the rule; the AAG's office indicated there needs to be something in the rule; the current rule made it impossible for us to say no.
- Daniel C. said it's clear when they are out of compliance, but when they come back into compliance but still owe a penalty that's when it's unclear.
- Daniel K. will check in with the AAG on this.

RECOMMENDATIONS: ADDITIONAL PERMITTING PROCESS IMPROVEMENTS

- Kyle commented that there is an "economies of scale" issue here. For example, Klickitat goes through the same process as King County. Anything the agency can do to make it easier for smaller entities is worthwhile.
- Doug gave an example of a lagoon with 23-60 customers (an evaporated lagoon). It's dry; you could sweep it up with a broom. So, why do we have to go through the permitting process? There is no way of making it into a viable system where it's suitable for beneficial use. It's inert material—dead bugs—that's it. The permit is too heavy-handed.
- Doug also stated that Ecology's SWP and WQP need to work together much better during the design phase for WWTPs so that there's an expectation that solids will be properly handled.
- Tony suggested Ecology revise the permitting process for a small quantity generator.
- Daniel K. said that he would attend the next Orange Book revision committee meeting and would bring (Doug's) biosolids design/facilities planning concerns to the committee.
- Tony wanted to add a comment from a local health jurisdiction (LHJ) in Central WA: Screening to significantly reduce recognizables when the material is part of interim cover for a landfill should not be required. Tony said that the cost estimates provided by the LHJ for screening (\$400,000) may be off but relayed that the presence of recognizables may not be an issue in certain type of sites. Tony added: I would hope that a permitting entity (Ecology) is not deciding what is the best beneficial use; Ecology should be accepting of all beneficial uses.
- Daniel K. said that we/Ecology have recognized that using biosolids as part of intermediate cover is a beneficial use if the material is being used to improve the cover material for the growth of vegetation. Ecology has put together a policy that states this. Daniel K. agrees the \$400,000+ estimate is way off; it's more like \$7,000.
- Kyle said this was a big sore spot (from the past) and agreed it doesn't cost anywhere near \$400,000.
- Tony asked: Is it reasonable to require screening for beneficial use at a landfill?
- Daniel K. agreed that we should be reasonable about recognizables; there may be circumstances where that is not necessary.
- Arlie said the cost was an issue (4 ½ cents/gallon). They are concerned that if they have to grind or screen it, that it will drive their costs up, and even another ½ cent per gallon could be considered to be significant.
- Daniel K. gave some background and said Ecology offered to pay for a screen for the facility being discussed 4-5 years ago, but the offer was rejected.

- Roger said trash may leave the site due to the wind and that may be a good reason to require screening even in this type of situation. I'd like to see some degree for screening so the county doesn't have to clean it up.
- Doug asked if they need a permit?
- Daniel K. said yes and Ecology has previously issued final coverage to the facility being discussed. They are handling the material as biosolids—which includes testing, tilling, etc., and my understanding is that they are actually growing something now. The reason screening isn't now required is that the rule doesn't currently require screening for biosolids although it does for septage.
- Michael asked if we are talking about wastewater design for screening or grinding.
- Daniel K. said the plan—as discussed during Meeting #1—is to require that all biosolids/septage applied to the ground or sold/given away to the public be reasonably free of recognizables prior to application or sale/give away. There's no plan to say when or where screening or grinding has to take place.
- Daniel K. asked for any last comments.
- Doug said when we got ours (permit) back as an electronic document there were formatting issues; there clearly are glitches. The computer application is tough for my word processor to use; even pulling up the permit applications and report forms can be difficult.
- Kyle agreed that there are formatting issues (displays different font, etc. when completing the forms). Recommend that you/Daniel K. sit down, fill out the forms and identify errors.
- Daniel K. stated that he has done that and recognizes that there are problems with the current forms. We will work on this and improve the quality of the forms.
- Several BRRAG members suggested switching to using online report forms.
- Doug would like to reiterate that small facilities should be considered (testing parameters, etc. might be reduced). Smaller communities need basic relief.
- Roberta said that small facilities could get help (perhaps using student interns at Ecology?)
- Tony suggested different categories of users/generators for the general permit. Examples: classes of generators and facilities.
- Roberta asked, isn't that the way the EPA permits works? (classes of generators/facilities)
- Dick said yes, that they separate permits by-use and by-facilities. He said it depends on facility type. The application scope differed with facility type. (Smaller for facilities without discharge; they have less of an application to fill out as opposed to larger facilities.)

DICK HETHERINGTON (EPA) FOLLOW-UP ISSUES

- Dick commented on two issues:
 - o Based on the email and attachments Dick sent out to the BRRAG members, Dick said he would like to have rules that incorporate general permit provisions into 308.
 - o Dick also said he would like to move towards the spirit of general permitting and start doing things for the smaller facilities—for many of the requirements, move them together—and he sees a need to standardize

the permit for the state. He said, I'm not saying jump all the way to grouping everything into general permits; for example, clarify what needs to be done for certain groups, such as anaerobic digesters with a certain pathogen reduction method, etc.

NEXT STEPS

Daniel K. relayed the following to the BRRAG:

- Meeting notes from today will be sent out to the BRRAG members to comment next week. Members will have a little over a week to comment. The meeting minutes will then be posted on Ecology's biosolids rule revision website within two weeks.
- Ecology will be sending out draft language revisions to the BRRAG sometime before the next meeting. This will include any significant changes except for fees. The timing for draft rule language is driven by the economic analysis that will begin in September 2006. Most of the rule needs to be written by September to start the economic analysis, with the exception of the fee section, which will be finished in the fall.
- The rule language will be sent out in strikethrough version and in a version with all changes accepted (for ease of reading).
- The next BRRAG meeting is scheduled for Friday, September 15. We will talk about fees. Keep in mind there is a \$200,000+ budget shortfall in the biosolids program. Please think about how this can best be addressed.
- (Tony clarified that it is on Ecology's side. There is no consideration for health departments in that \$200,000.)